

## REMARKS

The Office Action of January 22, 2010 has been reviewed and the comments therein were carefully considered. Claims 9, 27, 29-31, 33-52, 54-56, and 58 are pending. Claims 9, 27, 29, 33-50, 54-56, and 58 are allowed. Claims 30-31 were withdrawn from consideration. Applicant is amending claims 51 and 52.

In accordance with the discussion on January 14, 2011, claims 30-31 are included in the listing of claims.

### **Specification**

Applicant is amending paragraph at page 3, lines 7-15 to include "The transceiver unit 40 contains a number of functional elements including: an antenna 46, receiver 50, synchroniser 52, header decoder 54, controller 60, memory 56, which may include non-transitory machine accessible and readable media, packetiser 42, clock 68, frequency hop controller 48 and transmitter 44." The amendment is supported by the patent application as originally filed, *e.g.*, Figure 4 and page 3, lines 7-15 and page 4, line 26. No new subject matter has been added.

### **Claim Rejections Under 35 U.S.C. §101**

**Claims 51-52 are rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter.**

Regarding claims 51 and 52, Applicant is amending the claims to be directed to a "non-transitory machine accessible and readable medium," which is supported by the patent application as originally filed, *e.g.*, Figure 4 and page 3, lines 7-15 and page 4, line 26.

The Office Action alleges (Pages 2-3.):

... Claims 51-52 are directed towards a service implemented in a machine accessible and readable medium which appears to cover both transitory and non-transitory embodiments. The specification merely recites the term "machine-accessible and readable, useable medium", but no specific definition is provided to define this claimed term. The United States Patent and Trademark Office (USPTO) is required to give claims their broadest reasonable interpretation consistent with the specification during proceedings before the USPTO. See *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989) (during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow). The broadest reasonable interpretation of a claim drawn to a computer readable

medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals per se in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal per se, the claim must be rejected under 35 U.S.C. §101 as covering non-statutory subject matter. See *In re Nuijten*, 500 F.3d 1346, 1356-57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter) and Interim Examination Instructions for Evaluating Subject Matter Eligibility Under 35 U.S.C. §101, Aug. 24, 2009; p. 2. The Examiner suggests that the Applicant add the limitation "non-transitory machine accessible and readable medium" to the claim(s) in order to properly render the claims in statutory form in view of their broadest reasonable interpretation in light of the originally filed specification. The examiner also suggests that the specification be amended to include the term "non-transitory machine-accessible and readable medium" to avoid a potential objection to the specification for a lack of antecedent basis of the claimed terminology."

However, claims 51-52 are directed to a non-transitory machine accessible and readable medium, and consequently Applicant requests reconsideration of the claims.

Applicants therefore respectfully request reconsideration of the pending claims and a finding of their allowability. A notice to this effect is respectfully requested. Please feel free to contact the undersigned should any questions arise with respect to this case that may be addressed by telephone.

Respectfully submitted,

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